

Date: 20071127

Docket: IMM-5458-06

Citation: 2007 FC 1245

Vancouver, British Columbia, November 27, 2007

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

THOMAS VINCENT CRUZE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Thomas Vincent Cruze (the “Applicant”) seeks judicial review of the decision made by the Immigration and Refugee Board, Refugee Protection Division (the “Board”) on September 14, 2006. In its decision, the Board determined that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), respectively.

[2] The Applicant is a citizen of Sri Lanka who based his claim upon his status as a homosexual who is at risk from the family of his deceased lover. The Board did not believe the Applicant's claim to be a homosexual nor that he was at risk.

[3] According to the decision of the Federal Court of Appeal in *Sketchley v. Canada (Attorney General)* (2005), 344 N.R. (F.C.A.), each decision of an administrative decision-maker is subject to a pragmatic and functional analysis for the purpose of identifying the applicable standard of review. Four factors are to be considered: the presence or absence of a privative clause; the expertise of the tribunal; the purpose of the legislation; and the nature of the question.

[4] The Act contains no privative clause and this factor tends in favour of deference to the decision-maker. The Board is a specialized tribunal and this factor also favours deference. The purpose of the Act is to regulate the admission of persons into Canada. This is a broad purpose which favours deference. Finally, the nature of the question here is a factual one: does the Applicant satisfy the requirements of section 96 or subsection 97(1) of the Act? Factual findings are generally assessed on the standard of patent unreasonableness, having regard to paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[5] On balance, I conclude that the appropriate standard of review in this case is that of patent unreasonableness.

[6] On the basis of the material contained in the tribunal record, including the Applicant's Personal Information Form (the "PIF") and his evidence before the Board, I am satisfied that the Board's conclusions meet this standard. The Board did not believe the Applicant's claim to be a homosexual. His claims to be at risk, of either persecution or cruel and unusual punishment, were premised upon his sexuality. That critical factor was not accepted by the Board. It follows that the Board's rejection of this key element was fatal to the Applicant's claim.

[7] In light of the evidence submitted to the Board, including the oral evidence of the Applicant, I am satisfied that the Board's conclusions were not patently unreasonable. I note that the interventions of the Board do not demonstrate the air of homophobia that was an issue in *Kravchenko v. The Minister of Citizenship and Immigration*, 2005 F.C. 387.

[8] In the result, the application for judicial review is dismissed. There is no question for certification arising.

ORDER

The application for judicial review is dismissed, there is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5458-06

STYLE OF CAUSE: Thomas Vincent Cruze v. The Minister of Citizenship and Immigration

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 16, 2007

REASONS FOR ORDER AND ORDER: HENEGHAN J.

DATED: November 27, 2007

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